REMARKS

This communication is a full and timely response to the non-final Office action dated January 10, 2005 (Paper No./Mail Date 200501007). By this communication, claims 17-20, 22, and 24-26 have been canceled without prejudice or disclaimer of the underlying subject matter. Further, claims 6-10 and 14-16 have been amended.

Claims 6, 8, and 14-16 have been amended to recite a first plate of the pair of plates has a first diffraction angle and a second plate of the pair of plates has a second diffraction angle, and the first and second plates are mounted so that each plate is independently adjustable along the direction of an optical axis of the optical pickup device to regulate at least one of the first and second diffraction angles. Support for the changes to claims 6, 8, and 14-16 can be found variously throughout the specification, for example, at paragraph [0099] of corresponding U.S. Patent Application Publication No. 2004-0027953. No new matter has been added.

Claims 9 and 10 have been amended to recite the diffraction element includes a pair of plates, a first plate of the pair of plates has a first diffraction angle and a second plate of the pair of plates has a second diffraction angle, and the first and second plates are mounted so that each plate is independently adjustable along the direction of an optical axis of the optical pickup device to regulate at least one of the first and second diffraction angles. Support for the changes to claims 9 and 10 can be found variously throughout the specification, for example, at paragraph [0099] of corresponding U.S. Patent Application Publication No. 2004-0027953. No new matter has been added.

Claims 6-10, 14-16, 21, and 23 are pending where claims 6-10 and 14-16 are independent.

Rejections Under 35 U.S.C. §103

Claims 6-10 and 14-26 were rejected under 35 U.S.C. §103(a) as unpatentable over *Uchizaki et al.*, U.S. Patent No. 6,646,975 in view of *Ohuchida et al.*, U.S. Patent No. 4,935,911. Applicant respectfully traverses this rejection.

Claim 6 recites an optical pickup device comprising a first light source for emitting a first light beam having a first wavelength; a second light source for emitting a second light beam having a second wavelength different from the first wavelength; an objective lens for focusing said first light beam or said second light beam to the signal recording surface of an optical recording medium of a first matching to the first wavelength of that of an optical recording

medium of a second type matching to the second wavelength, whichever appropriate; a photodetector for detecting the light beam focused on the signal recording surface of the optical recording medium of the first type or that of the optical recording medium of the second type, whichever appropriate, by the objective lens and reflected by the signal recording surface; and a diffraction element having a pair of plates arranged on the light path from the signal recording surfaces of the two pieces of optical recording medium to the photodetector, each of said plates carrying a diffraction grating formed on one of the surface planes, wherein a first plate of the pair of plates has a first diffraction angle and a second plate of the pair of plates has a second diffraction angle, and the first and second plates are mounted so that each plate is independently adjustable along the direction of an optical axis of the optical pickup device to regulate at least one of the first and second diffraction angles; at least either the first light beam adapted to be used for reading information signals from the signal recording surface of the optical recording medium of the first type and reflected by the signal recording surface of the optical recording medium of the first type or the second light beam adapted to be used for reading information signals from the signal recording surface of the optical recording medium of the second type and reflected by the signal recording surface of the optical recording medium of the second type and being diffracted by the diffraction element, wherein the first reflected light beam and the second reflected light beam being focused to a same spot on the light receiving surface of the photodetector.

Similarly, each of independent claims 14-16 recite "a first plate of the pair of plates has a first diffraction angle and a second plate of the pair of plates has a second diffraction angle, and the first and second plates are mounted so that each plate is independently adjustable along the direction of an optical axis of the optical pickup device to regulate at least one of the first and second diffraction angles."

Independent claim 9 recites an optical disc device comprising a rotary operating mechanism for driving one or more than one optical discs operating so many pieces of optical recording medium as to rotate; and an optical pickup device arranged opposite to the signal recording surfaces of the one or more than one optical discs driven to rotate by said rotary operating mechanism; said optical pickup device comprising a first light source for emitting a first light beam having a first wavelength; a second light source for emitting a second light beam having a second wavelength different from the first wavelength; an objective lens for focusing said first light beam or said second light beam to the signal recording surface of an optical

recording medium of a first type matching to the first wavelength or that of an optical recording medium of a second type matching to the second wavelength, whichever appropriate; a photodetector for detecting the light beam focused on the signal recording surface of the optical recording medium of the first type or that of the optical recording medium of the second type, whichever appropriate, by the objective lens and reflected by the signal recording surface; and a diffraction element arranged on the light path from the light sources to the photodetector by way of the two pieces of optical recording medium, wherein the diffraction element includes a pair of plates, a first plate of the pair of plates has a first diffraction angle and a second plate of the pair of plates has a second diffraction angle, and the first and second plates are mounted so that each plate is independently adjustable along the direction of an optical axis of the optical pickup device to regulate at least one of the first and second diffraction angles; at least either the first light beam adapted to be used for reading information signals from the signal recording surface of the optical recording medium of the first type and reflected by the signal recording surface of the optical recording medium of the first type or the second light beam adapted to be used for reading information signals from the signal recording surface of the optical recording medium of the second type and reflected by the signal recording surface of the optical recording medium of the second type and being diffracted by the diffraction element, wherein the first reflected light beam and the second reflected light beam being focused to a same spot on the light receiving surface of the photodetector.

Similarly, independent claim 10 recites "the diffraction element includes a pair of plates, a first plate of the pair of plates has a first diffraction angle and a second plate of the pair of plates has a second diffraction angle, and the first and second plates are mounted so that each plate is independently adjustable along the direction of an optical axis of the optical pickup device to regulate at least one of the first and second diffraction angles."

Uchizaki discloses a semiconductor laser array having, among other things, an optical integrated unit 11 that includes a laser diode 31, a photodetector 35, a holographic optical element 33a collimator lens 14, and an objective lens 17. The laser diode 31 releases laser light at a wavelength of either 650 nm or 780 nm. Return lights RL1 and RL2, which are reflected from a recording medium, are diffracted by hologram element 33 such that the resulting diffracted beams DL1P and DL2P can be converged on to the same position on the photodetector 35. The Examiner acknowledges that *Uchizaki* fails to disclose, teach, or suggest

at least a diffraction element that has a pair of plates. The Examiner relies on *Ohuchida* in an attempt to remedy this deficiency.

Ohuchida discloses an optical head device that records and reproduces information. The optical head device performs beam splitting and converging functions on light reflected from a photo-magnetic disk and further includes a dual-divided diffraction grating 230. In particular, the diffraction grating 230 includes two diffraction grating elements 230a and 230b are formed symmetrically with each other on a grating substrate 230c.

The Office Action further acknowledges that *Uchizaki* and *Ohuchida* either singly or combined fail to disclose, teach, or suggest at least that the diffraction angle is regulated by adjusting the distance between the first and second plates of the diffraction element, previously recited in claims 17-20, 22, and 24-26. The Examiner takes Official Notice to remedy this deficiency. Because claims 6-10 and 14-16 have been amended to include subject matter previously recited in dependent claims 17-20, 22, and 24-26 Applicant timely challenges this Official Notice.

In a memo to the Examining Corps and Technology Center Directors, Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy, stated that reliance on "Official Notice" when an application is under final rejection should be rare. *See* "Procedures for Relying on Facts Which are Not of Record as Common Knowledge or for Taking Official Notice," United States Patent and Trademark Office, memo from Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy, page 2 (February 2002). Moreover, Mr. Kunin stated, "[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." *See* Id. "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." *See* Id.

In addition, if the Examiner believes that claims 6-10 and 14-16 still read on a prior art reference, Applicant hereby requests that the Examiner either:

(a) Provide another non-final Office Action withdrawing Official Notice, and applying a suitable reference for the asserted rejection; or

(b) Issue another rejection under an appropriate statutory provision and provide an affidavit or suitable reference attesting to all the elements taken as Official Notice.

By this reply, Applicant has timely challenged the Examiner's Official Notice.

Claims 21 depends from claim 9 and claim 23 depends from claim 10. By virtue of this dependency, Applicant submits that claims 21 and 23 are allowable for at least the same reasons given above with regard to their respective base claims. In addition, Applicant submits that claims 21 and 23 are further distinguished over *Uchizaki* and *Ohuchida* by the additional elements recited therein, and particularly with respect to each claimed combination. Applicant respectfully requests, therefore, that the rejection of claims 21 and 23 under 35 U.S.C. §103 be withdrawn, and these claims be allowed.

Conclusion

Based on at least the foregoing amendments and remarks, Applicants submit that claims 6-10, 14-17, 21, and 23 are allowable, and this application is in condition for allowance. Accordingly, Applicants request favorable reexamination and reconsideration of the application. In the event the Examiner has any comments or suggestions for placing the application in even better form, Applicants request that the Examiner contact the undersigned attorney at the number listed below.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. SON-2045/DIV from which the undersigned is authorized to draw.

Dated: March 28, 2005

Respectfully submitted,

By_____
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